

AMENDED IN ASSEMBLY APRIL 21, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1486

Introduced by Assembly Member Wyland

February 22, 2005

An act to amend Section 606.5 of the Unemployment Insurance Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1486, as amended, Wyland. ~~Professional—employer organizations.~~ *Employment: temporary employees.*

Existing law requires that the determination of the employer-employee relationship be made pursuant to common-law principles, with specified exceptions. Existing law provides that when an individual or entity contracts to supply an employee to perform services for a customer or client, and is a leasing employer or a temporary services employer, as defined, the individual or entity is the employer of the employee who performs the services.

This bill, after January 1, 2007, would require a leasing employer or temporary services employer, when reporting unemployment insurance for workers employed to provide services to a customer or client, to identify itself as a temporary services employer or leasing employer. The bill would further require the Employment Development Department to develop and issue a form that the leasing employer or temporary services employer may use to provide that identification.

~~Existing law, the Employment Agency, Employment Counseling, and Job Listing Services Act, regulates employment agencies, employment counseling services, and job listing services, as defined, but expressly excludes any person who provides any of these services~~

and charges fees exclusively to employers for those services. Existing law does not regulate human resource management businesses.

~~This bill would make findings and declarations concerning professional employer organizations, including declaring the intent of the Legislature that professional employer organizations be properly recognized and regulated, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 606.5 of the Unemployment Insurance
2 Code is amended to read:

3 606.5. (a) Whether an individual or entity is the employer of
4 specific employees shall be determined under common law rules
5 applicable in determining the employer-employee relationship,
6 except as provided in subdivisions (b) and (c).

7 (b) (1) As used in this section, a “temporary services
8 employer” and a “leasing employer” is an employing unit that
9 contracts with clients or customers to supply workers to perform
10 services for the client or customer and performs all of the
11 following functions:

12 ~~(1)–~~

13 (A) Negotiates with clients or customers for such matters as
14 time, place, type of work, working conditions, quality, and price
15 of the services.

16 ~~(2)–~~

17 (B) Determines assignments or reassignments of workers, even
18 though workers retain the right to refuse specific assignments.

19 ~~(3)–~~

20 (C) Retains the authority to assign or reassign a worker to
21 other clients or customers when a worker is determined
22 unacceptable by a specific client or customer.

23 ~~(4)–~~

24 (D) Assigns or reassigns the worker to perform services for a
25 client or customer.

26 ~~(5)–~~

27 (E) Sets the rate of pay of the worker, whether or not through
28 negotiation.

29 ~~(6)–~~

1 (F) Pays the worker from its own account or accounts.

2 ~~(7)~~

3 (G) Retains the right to hire and terminate workers.

4 (2) *On or after January 1, 2007, when reporting*
5 *unemployment insurance to the department for workers employed*
6 *to provide services to a customer or client, a temporary services*
7 *employer or a leasing employer shall identify itself as a*
8 *temporary services employer or leasing employer. The*
9 *department shall develop and issue a form that the temporary*
10 *services employer or leasing employer may use to identify itself*
11 *pursuant to this paragraph.*

12 (c) If an individual or entity contracts to supply an employee
13 to perform services for a customer or client, and is a leasing
14 employer or a temporary services employer, the individual or
15 entity is the employer of the employee who performs the
16 services. If an individual or entity contracts to supply an
17 employee to perform services for a client or customer and is not
18 a leasing employer or a temporary services employer, the client
19 or customer is the employer of the employee who performs the
20 services. An individual or entity that contracts to supply an
21 employee to perform services for a customer or client and pays
22 wages to the employee for the services, but is not a leasing
23 employer or a temporary services employer, pays the wages as
24 the agent of the employer.

25 (d) In circumstances which are in essence the loan of an
26 employee from one employer to another employer wherein
27 direction and control of the manner and means of performing the
28 services changes to the employer to whom the employee is
29 loaned, the loaning employer shall continue to be the employer of
30 the employee if the loaning employer continues to pay
31 remuneration to the employee, whether or not reimbursed by the
32 other employer. If the employer to whom the employee is loaned
33 pays remuneration to the employee for the services performed,
34 that employer shall be considered the employer for the purposes
35 of any remuneration paid to the employee by the employer,
36 regardless of whether the loaning employer also pays
37 remuneration to the employee.

38 ~~SECTION 1. The Legislature hereby finds and declares all of~~
39 ~~the following:~~

1 ~~(a) Professional employer organizations provide a valuable~~
2 ~~service to commerce and the citizens of California by increasing~~
3 ~~the opportunities of employers to develop cost-effective methods~~
4 ~~of satisfying their personnel requirements and providing~~
5 ~~employees with access to certain employment benefits that might~~
6 ~~not otherwise be available to them.~~

7 ~~(b) It is the intent of the Legislature that professional employer~~
8 ~~organizations operating in California be properly recognized and~~
9 ~~regulated by the state.~~

10 ~~(c) Any allocation of employer duties and responsibilities~~
11 ~~pursuant to this act shall preserve all rights to which covered~~
12 ~~employees would be entitled under a traditional employment~~
13 ~~relationship.~~